

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

UNITED STATES OF AMERICA

§

§

V.

§

5:06-CR-27

§

SALWILLEL THOMAS FIELDS

§

MEMORANDUM ORDER

The above-entitled and numbered criminal action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. Defendant filed objections to the Magistrate Judge's Report and Recommendation. The Court conducted a *de novo* review of the Magistrate Judge's findings and conclusions.

REPORT AND RECOMMENDATION

On March 8, 2007, Defendant filed a motion to suppress. After conducting a hearing on May 17, 2007, the undersigned issued a Report and Recommendation, recommending the motion be denied. The District Judge adopted the Report and Recommendation as the findings and conclusions of the Court. Defendant's previous counsel was allowed to withdraw and new counsel was appointed to represent Defendant.

On May 28, 2008, Defendant filed his Supplemental Motion to Suppress Evidence. On July 23, 2008, the motion was referred to the Magistrate Judge for the purpose of preparing a Report and Recommendation. The Court conducted a hearing on the supplemental motion on July 28, 2008. The hearing was concluded on July 30, 2008. After the parties filed briefs on Defendant's supplemental motion, the Magistrate Judge issued a Report and Recommendation on September 29,

2008, recommending Defendant's supplemental motion be denied.

DEFENDANT'S OBJECTIONS

Defendant objects to the Magistrate Judge's Report and Recommendation. Specifically, Defendant asserts the Affidavit for Search Warrant failed to establish probable cause that a crime had been committed at the locations to be searched, and it is a "bare bones" affidavit. Defendant also objects to the Magistrate Judge's finding that the good faith exception to the exclusionary rule applies in this case. In addition, Defendant asserts the search that occurred exceeded the scope of a "protective sweep" allowable under *Maryland v. Buie*, 494 U.S. 325 (1990). Finally, Defendant contends he did not voluntarily consent to the search of his home, his vehicle, or that storage unit where controlled substances were allegedly found.

DE NOVO REVIEW

The Court, having reviewed the May 31, 2007 Report and Recommendation and Order Adopting, the September 29, 2008 Report and Recommendation, the parties' briefing, and Defendant's objections, agrees with the Magistrate Judge that Defendant's supplemental motion to suppress should be denied. The Court need not re-address the issue of whether the Affidavit for Search Warrant contains sufficient facts to support probable cause and the issuance of a search warrant. Not only did Defendant fail to object to the Magistrate Judge's recommended findings on the probable cause issue in May of 2007, but the Magistrate Judge found in both Reports that the *Leon* good-faith exception applied in this case even assuming that the affidavit on which the warrant was based was insufficient to establish probable cause.

The Court agrees the good-faith exception applies in this case. The Court further agrees with the Magistrate Judge that by waiving his *Miranda* rights and informing the arresting officers of the

presence of illegal substances and firearms in his home and vehicle, as well as giving his consent to search the off-site storage units, Defendant effectively and voluntarily cooperated with the police and consented to the searches.

In sum, the undersigned is of the opinion that the findings and conclusions of the Magistrate Judge are correct and hereby adopts same as the findings and conclusions of this Court. Accordingly, it is hereby

ORDERED that Defendant's Supplemental Motion to Suppress (Dkt. No. 57) is **DENIED**.

SIGNED this 16th day of October, 2008.

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE